

United States Postal Service

§ 960.13

against which the applicant seeks an award, but need not be served on any other party to the proceeding. If the adjudicative officer finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit shall be disposed of in accordance with the Postal Service's established procedures under the Freedom of Information Act, part 265 of this title.

§ 960.11 Documentation of fees and expenses.

(a) The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project or similar matter, for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The adjudicative officer may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed. In addition, the Board of Contract Appeals may require an applicant to submit to an audit by the Postal Service of its claimed fees and expenses.

(b) Where the case has been sustained in part and denied in part or where the applicant has prevailed in only a significant and discrete substantive portion of the case, the application must be limited to fees and expenses allocable to the portion of the case as to which the applicant was the prevailing party.

[46 FR 45945, Sept. 16, 1981, as amended at 52 FR 6798, Mar. 5, 1987]

§ 960.12 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the

proceeding or in a significant and discrete substantive portion of the proceeding, but in no case later than 30 days after the Postal Service's final disposition of the proceeding.

(b) If review or reconsideration is sought or taken of a decision as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy.

(c) For purposes of this rule, final disposition means the later of (1) the date on which an initial decision or other recommended disposition of the merits of the proceeding by an adjudicative officer or intermediate review board becomes administratively final;

(2) Issuance of an order disposing of any petitions for reconsideration of the Postal Service's final order in the proceeding;

(3) If no petition for reconsideration is filed, the last date on which such a petition could have been filed;

(4) Issuance of a final order or any other final resolution of a proceeding, such as a settlement or voluntary dismissal, which is not subject to a petition for reconsideration;

(5) In proceedings under 39 U.S.C. 3005, on the date that an Administrative Law Judge enters an order indefinitely suspending further proceedings on the basis of a compromise agreement entered into between the parties; or

(6) In proceedings before the Board of Contract Appeals, the Board of Contract Appeals decision on quantum. When the Board decides only entitlement and remands the issue of quantum to the parties, the final disposition occurs when the parties execute an agreement on quantum, or if the parties cannot agree on quantum and resubmit the quantum dispute to the Board, when the Board issues a decision on quantum.

[46 FR 45945, Sept. 16, 1981, as amended at 52 FR 6798, Mar. 5, 1987]

Subpart C—Procedures for Considering Applications

§ 960.13 Filing and service of documents.

Any application for an award or other pleading or document related to

§ 960.14

an application shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding, except as provided in § 960.11(b) for confidential financial information.

§ 960.14 Answer to application.

(a) Within 30 days after service of an application, counsel representing the Postal Service may file an answer to the application. Unless the Postal Service counsel requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of this section, failure to file an answer within the 30-day period may be treated as a consent to the award requested.

(b) If the Postal Service counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the adjudicative officer upon request by Postal Service counsel and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of the Postal Service's position. If the answer is based on any alleged facts not already in the record of the proceeding, the Postal Service shall include with the answer either supporting affidavits or a request for further proceedings under § 960.19.

§ 960.15 Reply.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 960.19.

§ 960.16 Comments by other parties.

Any party to a proceeding other than the applicant and Postal Service may file comments on an application within 30 days after it is served or on an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the adjudicative officer de-

39 CFR Ch. I (7-1-03 Edition)

termines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

§ 960.17 Settlement.

The applicant and the Postal Service may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded. If a prevailing party and Postal Service counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 960.18 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or Postal Service counsel, or on his or her own initiative, the adjudicative officer may order further proceedings, such as an informal conference, oral argument, additional written submissions, or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible. Whether or not the position of the agency was substantially justified shall be determined on the basis of the entire administrative record that is made in the adversary adjudication for which fees and other expenses are sought.

(b) A request that the adjudicative officer order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

[46 FR 45945, Sept. 16, 1981, as amended at 52 FR 6798, Mar. 5, 1987]

§ 960.19 Decision.

(a) The adjudicative officer shall issue an initial decision on the application as promptly as possible after completion of proceedings on the application. The decision shall include written